National Labor Relations Board



Weekly Summary of NLRB Cases

Division of Information	Washington, D.C. 20570	Tel. (202) 273-1991
August 1 2008		W-3167

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A.J. Mechanical, Inc., William A. Greene a/k/a Arnold Greene and Cynthia D. Greene (15-CA-15350, et al.; 352 NLRB No. 108) Pensacola, FL July 23, 2008. On remand from the circuit court, the Board reversed its supplemental decision and order and, applying the test set forth in White Oak Coal Co., 318 NLRB 732 (1995), pierced the corporate veil of A. J. Mechanical, Inc. and imposed personal liability for backpay on the now-defunct corporation's president and his wife. [HTML] [PDF]

Under *White Oak Coal*, the Board will pierce the corporate veil when: (1) there is such unity of interest, and lack of respect given to the separate identity of the corporation by its shareholders, that the personalities and assets of the corporation and the individuals are indistinct; and (2) adherence to the corporate form would sanction a fraud, promote injustice, or lead to an evasion of legal obligations.

In the underlying supplemental decision and order (345 NLRB 295 (2005)), the Board reversed the administrative law judge's determination that A.J. Mechanical's former president and co-owner, William A. (Arnold) Greene, and his wife, Cynthia Greene, should be held jointly and severally liable for backpay along with the corporation. Assuming without finding that the first prong of *White Oak Coal* had been met, the Board determined that the evidence was insufficient to establish that the second prong had been met. The court of appeals disagreed. In *Carpenters & Millrights Local 2471 v. NLRB*, 481 F.3d 804 (D.C. Cir 2007), the court summarily enforced the judgment against the corporation, but vacated the Board's decision refusing to pierce the corporate veil. Finding that the Board's analysis neither provided sufficient evidence to substantiate its conclusion nor accounted for significant countervailing evidence, the court remanded the proceeding to the Board.

Applying prong one of *White Oak Coal* to the evidence for the first time, the Board determined that throughout its existence, the principals of A.J. Mechanical disregarded corporate formalities and structure with respect to decision-making, record-keeping and accounting. The Board additionally found that the Greenes routinely commingled personal and corporate assets and property. Accordingly, the Board found sufficient unity of interest and lack of respect for the separate identity of the corporation to conclude that the first prong of *White Oak Coal* was satisfied.

Accepting the court's decision as law of the case with respect to the evidence previously relied upon relating to prong two, the Board determined that the remaining record evidence also supports the conclusion that adherence to the corporate form would unjustly result in the evasion of A.J. Mechanical's backpay obligations. Arnold Greene's role as owner, officer, and director coupled with his day-to-day business involvement and diversion of corporate assets to his personal benefit demonstrates his individual participation in the inequity. Cynthia Greene's writing checks payable to her husband on the corporate account, which amounts were thereafter placed in their joint account as a shared asset, demonstrates that she was more than merely a passive recipient of benefits but rather an active participant in the dissipation of corporate assets. Accordingly, the Board determined that the second prong of *White Oak Coal* had been satisfied with respect to both Arnold and Cynthia Greene and held both individually liable for A.J. Mechanical's outstanding backpay obligations.

(Chairman Schaumber and Member Liebman participated.)

Tower Industries d/b/a Allied Mechanical, Inc. (31-CA-26120, et al.; 352 NLRB No. 110) Ontario, CA July 24, 2008. In this compliance case, the Board adopted the administrative law judge's finding that discriminatee Walter Reddoch adequately searched for interim employment. [HTML] [PDF]

(Chairman Schaumber and Member Liebman participated.)

Hearing at Los Angeles, Dec. 3-4, 2007 and Feb. 5, 2008. Adm. Law Judge William G. Kocol issued his supplemental decision March 13, 2008.

Goya Foods of Florida (12-CA-23524, et al.; 352 NLRB No. 109) Miami, FL July 25, 2008. The Board adopted the administrative law judge's findings that the Respondent violated Section 8(a)(5) and (1) of the Act by unilaterally changing pension plans and health-insurance plans on two occasions and by refusing the Union's information requests for a detailed seniority list, unit employees' addresses and phone numbers, the employee handbook, and any benefit policies. The Board also adopted the judge's finding that the Respondent violated Section 8(a)(1) by informing employees that "Union employees . . . are not eligible" to participate in its 401(k) plan. The Board explained that the Respondent would have an opportunity in compliance to litigate whether it is impossible or unduly or unfairly burdensome to restore either of the two prior health insurance plans. Further, the Board explained that make-whole relief would be inapplicable if the Union chose continuation of the final unilaterally implemented health plan. [HTML] [PDF]

(Chairman Schaumber and Member Liebman participated.)

Charges filed by UNITE HERE; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Miami on Nov. 5, 2007. Adm. Law Judge Keltner W. Locke issued his decision Jan. 23, 2008.

Proper Steel Erectors, Inc. and its alter ego B & M Steel Erectors, Inc. (3-CA-24700; 352 NLRB No. 113) Pompey and Central Square, NY July 25, 2008. The Board granted the General Counsel's motion for reconsideration of its prior decision to deny in part the General Counsel's motion seeking default judgment on allegations regarding the Respondent's backpay obligations and contributions owed to union benefit funds set forth in the March 26, 2007 amended compliance specification. (See 352 NLRB No. 11) Based on statements by the Respondent's counsel in a March 21, 2007 letter and email submitted in support of the motion, and the Respondent's failure to file a timely response to the May 20, 2008 Notice to Show Cause, the Board found that the Respondent does not contest any of the allegations set forth in the amended compliance specification. Accordingly, the Board deemed those allegations to be admitted, and granted the General Counsel's motion for default judgment in its entirety. [HTML] [PDF]

(Chairman Schaumber and Member Liebman participated.)

The McBurney Corp. (26-CA-17564, et al.; 352 NLRB No. 112) Norcross, GA July 23, 2008. In an earlier proceeding, the Board found that the Respondent unlawfully refused to hire certain union-affiliated applicants, and ordered the Respondent to provide instatement and backpay to all the discriminatees. The Board specified, however, that those remedies would be subject to the limitations established in *Oil Capitol*, 349 NLRB No. 118 (2007). Subsequently, the General Counsel moved for reconsideration of that qualification, asserting that retroactive application of *Oil Capitol* would cause manifest injustice. The Board denied that motion. [HTML] [PDF]

In the present case, the Board denied the General Counsel's second motion for reconsideration, which asserted that the Board—in denying the General Counsel's first motion—failed to consider adequately whether applying *Oil Capitol* would cause manifest injustice. The Board noted that that issue was considered and rejected by the Board in the first motion for reconsideration, and thus the second motion did not establish extraordinary circumstances within the meaning of Section 102.48 of the Board's Rules.

For institutional reasons, Member Liebman concurred in the denial of the General Counsel's second motion. She noted that denying the motion avoids delay in the disposition of the case, including the completion of a compliance proceeding. Member Liebman also stated her view that, if retroactive application of *Oil Capitol* ultimately has a demonstrably adverse effect on backpay, the General Counsel and the Charging Party would be free to pursue the manifest injustice issue.

(Chairman Schaumber and Member Liebman participated.)

LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

The Beacon Journal Publishing Co., d/b/a The Akron Beacon Journal (Northeast Ohio Newspaper Guild Local 1, A Sector of CWA Local 34001) Akron, OH July 22, 2008. 8-CA-37281; JD-33-08, Judge George Alemán.

Wiers International Trucks, Inc., et al. (Operating Engineers Local 150) Elkhart, IN July 23, 2008. 25-CA-30375, 25-RC-10389; JD-40-08, Judge Paul Bogas.

Roadway Express, Inc. and Teamsters Local 769 (an Individual) Miami, FL July 24, 2008. 12-CA-22202, 12-CB-5002; JD(ATL)-28-08, Judge Keltner W. Locke.

Racetrack Food Services, Inc. and Casino Food Services (UNITE HERE Local 274) Bensalem, PA July 25, 2008. 4-CA-35158; JD-39-08, Judge Wallace H. Nations.

LIST OF UNPUBLISHED BOARD DECISIONS AND ORDERS IN REPRESENTATION CASES

(In the following cases, the Board considered exceptions to Reports of Regional Directors or Hearing Officers)

DECISION AND CERTIFICATION OF REPRESENTATIVE

Peri Formwork Systems, Inc., Calumet Park, IL, 13-RC-21526, July 21, 2008 (Chairman Schaumber and Member Liebman)

Science Museum of Minnesota, St. Paul, MN, 18-RD-2634, July 22, 2008 (Chairman Schaumber and Member Liebman)

(In the following case, the Board denied requests for review of the Decisions and Direction of Election (D&DE) of Regional Directors)

Bob Cooper Glass & Mirror Co., Inc., Madison, WI, 30-RD-1494, July 24, 2008 (Chairman Schaumber and Member Liebman)

Miscellaneous Decisions and Orders

ORDER [denying Petitioner's request for review of Regional Director's approval of stipulation to set aside election]

DHL Express, Inc., Wilmington, OH, 9-RC-18108, July 22, 2008 (Chairman Schaumber and Member Liebman)

ORDER [affirming Regional Director's administrative dismissal of petition]

General Beverage Sales Co. – Oshkosh, Oshkosh, WI, 30-RM-559, July 24 2008 (Chairman Schaumber and Member Liebman)
